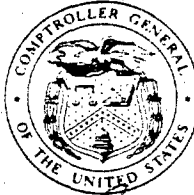


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DECISION



THE COMPTROLLER GENERAL  
OF THE UNITED STATES  
WASHINGTON, D. C. 20548

*[Request for Bid Preparation Costs]*

FILE: B-196029.3 DATE: August 8, 1980

MATTER OF: Lamson Division of  
Diebold, Incorporated

DIGEST:

1. Claimant of bid preparation costs must show that arbitrary or capricious Government action precluded claimant from receiving award to which it was entitled.
2. There is no legal basis to pay anticipated profits to unsuccessful bidder.

Lamson Division of Diebold, Incorporated (Lamson) requests reimbursement for costs incurred in the preparation of its bid plus a percentage of its anticipated profit. The request for reimbursement relates to a solicitation issued and a contract awarded by the General Services Administration (GSA) to Mosler Safe Company (Mosler) for a material handling system for the Social Security Administration Headquarters. In our decision in Lamson Division of Diebold, Incorporated, B-196029.2, June 30, 1980, 80-1 CPD 447, we sustained a protest by Lamson against GSA's modification of the contract on the basis that the modification had the effect of circumventing the competitive procurement statutes. However, we did not recommend remedial action since the system already had been installed.

The claim is denied.

Mosler, the low bidder under the invitation for the requirement, had advised the contracting officer shortly after award and before returning an executed copy of the contract and performance and payment bonds that its equipment supplier had sold its product line and declared bankruptcy, and that Mosler therefore was

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unable to fulfill the Government's need within the necessary time period. The contracting officer nonetheless issued the firm a notice to proceed, but almost immediately thereafter also issued a contract modification to accept a value engineering change proposal (VECP) that had been offered by Mosler before the executed contract and bonds were returned. The VECP involved the installation of a substitute system with somewhat lesser capabilities and at a lower price than the one solicited.

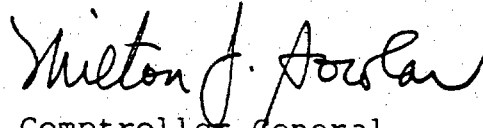
In sustaining the protest, we recognized the necessity for contract modifications and the efficacy of the VECP procedure in general. However, we held:

" \* \* \* the notice to proceed was issued to Mosler by the contracting officer with knowledge of the severe difficulty if not impossibility to supply a system in accordance with the firm's obligation under the contract as awarded. Under the circumstances, we believe that the issuance of the change order almost immediately after contract award to accept a VECP submitted by a contractor who otherwise simply was not in a position to perform, and including specification changes that were at least arguably significant, effectively distorted the competition on which the award of the contract was based. \* \* \*"

Regarding the claim for bid preparation costs, to be successful the claimant must show not only that the Government acted arbitrarily and capriciously, but that such action precluded the firm from receipt of an award to which it was otherwise entitled. McCarty Corporation v. United States, 499 F. 2d. 633 (Ct. Cl. 1974). However, the record shows that Lamson was only the third low bidder under GSA's invitation. Accordingly, and without deciding whether the Government's action in this case was arbitrary or capricious under the above standard, we cannot say that but for such action Lamson would have been awarded the contract.

Accordingly, the claim for bid preparation costs is denied.

With respect to the remainder of Lamson's claim, there is no legal basis for allowing an unsuccessful bidder anticipated profit. Gupta Carpet Professionals, Inc., B-196051, October 25, 1979, 79-2 CPD 294.

A handwritten signature in dark ink, appearing to read "Milton J. Jordan". The signature is written in a cursive, flowing style with a large initial "M".

For The Comptroller General  
of the United States